

Appl. No. : 10/769,031
Amdt. dated October 17, 2005
Reply to Office Action of July 1, 2005

Amendments to the Drawings:

Remarks/Arguments

The phrase "I claim" is inserted on page twelve to accommodate traditional form.

Examiner rejects Claims 1 - 15 under U.S.C. 103(a) as being unpatentable over

Vanderberg et al in view of Porzilli. Claim 1 of the application reads as follows;

1. A stringed musical instrument comprising:
 - a) a hollow body comprised of a contoured front face, a contoured back face oriented generally opposite said contoured front face, and a continuous side member extending around and between said front and back faces to form a hollow body;
 - b) an elongated neck extending from one end of said hollow body terminating in a headstock;
 - c) a sound aperture oriented in the central region of said contoured front face; and
 - d) a plurality of strings tautly oriented across said contoured front face and said sound aperture and anchored at the end of said headstock.

Examiner seems to cite U.S. Design Patent D314,783, by Vandenberg et al as disclosing the limitations present in the clause labeled "a" and also the limitation of "an elongated neck extending from one end of said hollow body" in the clause labeled "b" as well as further limitations directed to clause "a" occurring in later dependent claims. Examiner seems to cite U.S. Patent 6,563,033, by Porzilli, as disclosing the termination of the elongated neck into a headstock as in clause b, as well as limitations occurring in the clauses labeled "c" and "d".

Among the limitations which Examiner ascribes to Vandenberg et al is a hollow body as claimed in clause a of the instant application. Applicant can find no indication in the design patent by Vandenberg that in fact a "hollow body comprised of a contoured front face, a contoured back face oriented generally opposite said contoured front face, and a continuous side

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member extending around and between said front and back faces to form a hollow body” is disclosed or indicated. To Applicant, the body in Vandenberg appears solid with various guitar hardware attached.

MPEP §2142 states “The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.” Applicant respectfully submits that Examiner has not met this initial burden. MPEP § 2143 sets out the criteria for a prima facie case. That section states “To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Applicant maintains that the reference by Vandenberg et al does not disclose the claim limitation of a “a hollow body comprised of a contoured front face, a contoured back face oriented generally opposite said contoured front face, and a continuous side member extending around and between said front and back faces to form a hollow body” as claimed in the instant application, and therefore Examiner has not met the third criteria needed to establish a prima facie case of obviousness. There is no indication of a hollow body in Vandenberg.

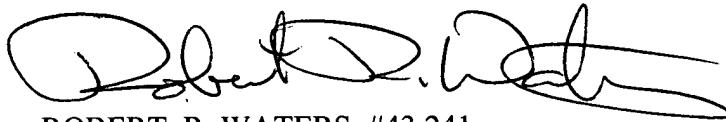
MPEP §2143.03 further states ‘To establish prima facie obviousness of a claimed

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invention, all the claim limitations must be taught or suggested by the prior art.' *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of that claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." From the above, Applicant submits that Examiner has not established a case of prima facie obviousness for claims dependent from Claim 1.

The Applicants hereby respectfully ask that the references be withdrawn, the application be amended as shown, and approved for advancement and allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert R. Waters", with a stylized flourish at the end.

ROBERT R. WATERS, #43,241
Counsel for Applicant

WATERS LAW OFFICE, PLLC
633 Seventh Street
Huntington, WV 25701
Ph (304) 522-6658
Fax (304) 522-7722